

## **REMARKS**

### **I. The Pending Claims and the Amendments to the Claims**

With the entry of the amendments above, the pending claims remain Claims 6, 8, 10-14, and 16-22. Claims 6, 16, and 19 are the pending independent claims. Claims 8, 10-14, 17, 18, and 20-22 are the pending dependent claims. The amendments include only amendments to independent Claims 6, 16, and 19. Each of independent Claims 6, 16, and 19 is amended to recite the multilayer film as comprising modified styrene polymer in an amount of at least about 35 weight percent, based on total film weight. Support for this amendment can be found in the specification at, for example, Page 4 lines 17-23. The amendments include no new matter.

### **II. The 35 USC §103 Rejection and Applicants' General Response Thereto**

Applicants general response to the §103 rejections of the claims remains the same as set forth in the amendment filed 26 December 2007.

### **III. A Prima Facie Case of Obviousness Has Not Been Established for Claims 6, 8, 10-14, and 16-22**

Applicants' initial comment and admission as to the disclosure of styrene/maleic anhydride copolymer in WIRTH remains as stated in the Amendment filed 26 December 2007.

Applicants' arguments that a prima facie case of obviousness has not been established for Claims 6, 8, 10-14, and 16-22 also remain as stated in the Amendment filed 26 December 2007.

### **III. Applicants' Specification Contains Objective Evidence of Nonobviousness: Unexpected Results**

Applicants hereby retract all of the remarks under the Objective Evidence heading in the Amendment filed 26 December 2007, and substitute the remarks set forth below in place of the remarks filed 26 December 2007 under this heading. While the objective evidence remarks set forth in the 26 December 2007 Amendment are not entirely incorrect, they fail to take into consideration the fact that each of Applicants' examples as set forth on Page 19 (i.e., Table I) of the specification has a bonding layer containing either 80% or 100% styrene-butadiene-styrene block copolymer as per GUSAVAGE et al. The remarks also fail to take into consideration the fact that the modified-styrene copolymer (i.e., the MOD-SBP1 and MOD-SBP2) are only present in the internal tie layers of the multilayer film. Thus, the remarks of 26 December 2007 are incorrect to the extent that they state that Applicants' invention provides objective evidence of unexpected results in solving the blistering problem with the modified-styrene polymer rather than the styrene/butadiene copolymer or the styrene/acrylonitrile copolymer of GUSAVAGE et al. Applicants hereby retract all of those arguments. The undersigned apologizes for any inconvenience caused by consideration of those arguments.

However, Applicants continue to maintain that other results in Applicants' specification provide objective evidence of nonobviousness. More particularly, Applicants' specification states:

It has now been found that when a gas-barrier film is used which contains an amount of styrene-based polymer of at least 35 percent by weight, where at least part of said styrene-based polymer is in the form of a modified styrene-based resin, it is possible to manufacture a polystyrene/gas-barrier film composite with gas-barrier and heat-sealability properties comparable to the composites described in the literature and actually on the market, and where the polystyrene substrate may contain up to 100 percent of reclaim material of the composite itself. [Applicants' specification, Page 4, lines 17-23]

In other words, Applicants' specification states that by utilizing modified styrene-based polymer as a portion of the styrene-based polymer, the result is that the substrate (i.e., the foam) can contain up to 100% reclaim of the substrate/film composite. Applicants contend that the ability to use up to 100% reclaim in the foam substrate is the result of chemical unpredictability.

More particularly, Applicants' specification states that in the process and article of GUSAVAGE et al, adding polystyrene to reclaimed substrate/film composite compatibilizes polyolefins such as polyethylene and EVA, but does not compatibilize EVOH with polystyrene:

Foam polystyrene/gas-barrier film composites with a bonding layer of styrene-butadiene or styrene-acrylonitrile copolymer are described EP-A-707,955. In this document the styrene containing bonding layer is used to reduce blister formation at the foam/film interface. It has been found however that an increase in the overall amount of styrene containing material, as provided by this bonding layer, helps compatibilizing polyolefins, such polyethylenes and EVA, with the polystyrene matrix but does not compatibilize EVOH with polystyrene and that therefore it does not allow to increase the reclaim level in the foamed polystyrene substrate. [Applicants' specification, Page 4 lines 8-15, emphasis added; note that EP707955= GUSAVAGE et al]

Applicants have discovered that the addition of modified styrene-based polymer, i.e., polystyrene modified to have polar groups copolymerized therewith or grafted thereon, results in the ability to

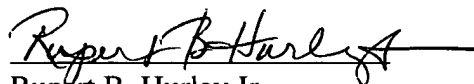
make the foam substrate from up to and including 100% substrate/film composite reclaim. The reclaim is substrate/film composite waste material that is ground up, blended together, blended with blowing agent, and thereafter extruded, resulting in a foam sheet material. Applicants contend that their discovery of the ability to make the foam substrate from up to 100% recycled film/substrate composite is a surprising result that is disclosed and enabled by their specification.

In summary, Applicants contend that their specification contains evidence of unexpected results that rebut any prima facie case of obviousness that may have been made out in the 25 July Office Action. On this additional basis, Applicants respectfully request that the 35 USC 103 rejection of Claims 6, 8, 10-14, and 16-22 be withdrawn.

#### **IV. Conclusion**

Applicants respectfully request reconsideration of the patentability of Claims 6, 8, 10-14, and 16-22, with a view towards allowance.

Respectfully Submitted,



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